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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,245	11/14/2003	Robert E. Oidtman	3115	1192

23545 7590 09/20/2005

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EXAMINER

HAWK, NOAH CHANDLER

ART UNIT PAPER NUMBER

3637

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/713,245	OIDTMAN, ROBERT E.	
	Examiner	Art Unit	
	Noah C. Hawk	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/14/03</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

1. Claims 23 and 24 are objected to because of the following informalities: Claim 23 depends from Claim 24. Dependent claims must refer back to another claim, not forward. For the purposes of examination, Claim 23 will be treated as depending from Claim 22. Further, Claim 24 depends from Claim 25. Dependent claims must refer back to another claim, not forward. For the purposes of examination, Claim 24 will be treated as depending from Claim 23. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 9 and 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 9 discloses a bracket wherein the bracket shaft comprises a first and second side which are connected and form an apex and are respectively connected to the first and second bracket shaft joist walls. However, in Claim 2 on which Claim 9 depends, the applicant discloses a bracket with three shaft walls. The applicant must

clarify whether a two-walled, essentially triangular shaft or a three-walled, essentially rectangular shaft is intended and rewrite the claims to reflect the clarification.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 13, 14, 18, 19, and 21-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 recites the limitation "the hook mechanism" in line 20. There is insufficient antecedent basis for this limitation in the claim. Claim 14 recites the limitation "the diameter of the hole." There is insufficient antecedent basis for this limitation in the claim. As written, the claim as well as Claims 1-3 define a hole with any conceivable diameter. Therefore, the language "a diameter of the filler bottom section being less than the diameter of the hole in the flooring surface" will not be considered. In order to enable one skilled in the art to make the filler plug of the claim, some indication of the desired size of the hole must be included. Additionally, the flooring section is not positively being claimed in combination with the brackets (see claim 1), therefore it is improper to define a bottom section with respect to this feature. Further, the filler plug recited in claim 14 discloses the same elements as set forth in Claim 1 as the hollow pole element: a hollow pole would have a cylindrical bottom section of smaller diameter than a hole through which it is to be inserted and a circular top section connected to the bottom section. The applicant must clarify the elements intended in Claim 14. Claim 18 recites the limitation "the table attachment" in line 9. There is insufficient antecedent basis for this limitation in the

claim. Claim 19 recites the limitation "each bracket wall bolt" in line 13. There is insufficient antecedent basis for this limitation in the claim. Claim 21 recites the limitation "the table attachment mechanism" in line 19. There is insufficient antecedent basis for this limitation in the claim. Claim 23 recites the limitation "outdoor accessory assembly." The applicant must define an outdoor accessory assembly in sufficient detail to allow one of ordinary skill in the art to determine what it is. Claim 25 recites the limitation "outdoor accessory assembly" in line 16. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

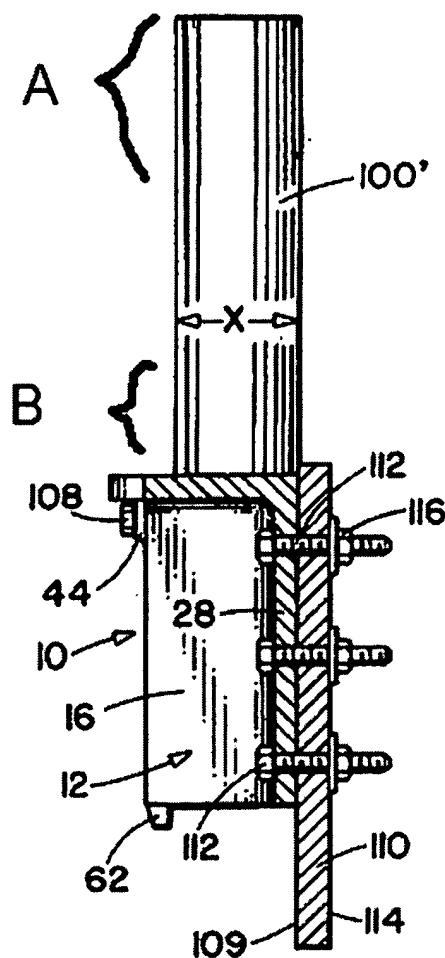
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3, 11, 12 and 14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Aberle in US Patent 5618078. Aberle discloses a bracket and pole assembly comprising a bracket (10)

comprising a bracket shaft (20) enclosed by three bracket walls (14,16,18) such that an end of a first bracket wall (16) is attached to a second bracket wall (14) and an end of the second bracket wall is attached to an end of the third bracket wall (18), two bracket shaft joist walls (28,30) separated by the bracket shaft (20), the first bracket shaft joist wall (28) being substantially perpendicularly connected to the end of the first bracket wall (16), the second bracket wall (14) being substantially perpendicularly connected at an end to a first end of the third bracket wall (18), the second bracket shaft joist wall (30) being substantially perpendicularly connected to the second end of the third bracket wall (18), and a bottom support (48) in the form of a base plate, the bracket being attachable to a floor joist to a raised flooring surface directly below a hole in a raised flooring surface, and a pole assembly comprising a removable hollow pole (100), an end portion of the pole being removably insertable in the bracket and supportable on the bottom support. Aberle is silent on whether the pole (100) is hollow, however, hollow poles are well known in the art and it would have been obvious to one of ordinary skill in the art at the time of invention to use a hollow pole in order to provide a lighter weight pole. Further, Aberle discloses a filler plug with a bottom section (B) generally cylindrical in shape (see Aberle, Column 4, lines 46-48) and a generally circular top section (A).

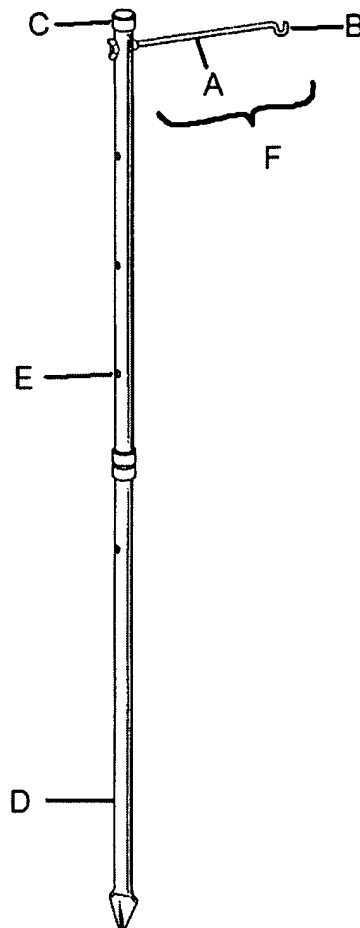


Aberle, Figure 9

9. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle as applied to claim 1 above, and further in view of Wright, Sr. in US Patent D462889. As stated above, Aberle teaches the limitations of Claim 1 including a pole assembly. Aberle does not disclose a plurality of cushion strips, a cap plug, or a hook mechanism. Wright, Sr. discloses a pole with a cap plug (C) and a hook mechanism (F) comprising a linear portion (A) extending through a hook bolt shaft (best seen in Wright,

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Sr., Figure 1) and a curved portion (B). The Office takes official notice that it is well known to use cushioning means, such as cushion strips longitudinally oriented along a pole, to insure a tight fit when two objects are insertably related. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle by adding cushion strips, and a cap plug and hook mechanism as taught by Wright, Sr. on the pole assembly in order to insure a tight fit between the pole and the bracket, to prevent water from getting in the top of the pole and in order to add utility to the pole.



Wright, Sr. Figure 1

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle in view of Wright, Sr. as applied to claim 4 above, and further in view of Tennant in US Patent 4662132. Aberle in view of Wright, Sr. discloses a table attachment bolt shaft (E) extending transversely through the pole below the hook mechanism but does not disclose a base plug. Tennant disclosed a base plug (74) removably insertable in a bottom end of a pole (22). It would have been obvious to one of ordinary skill in the art

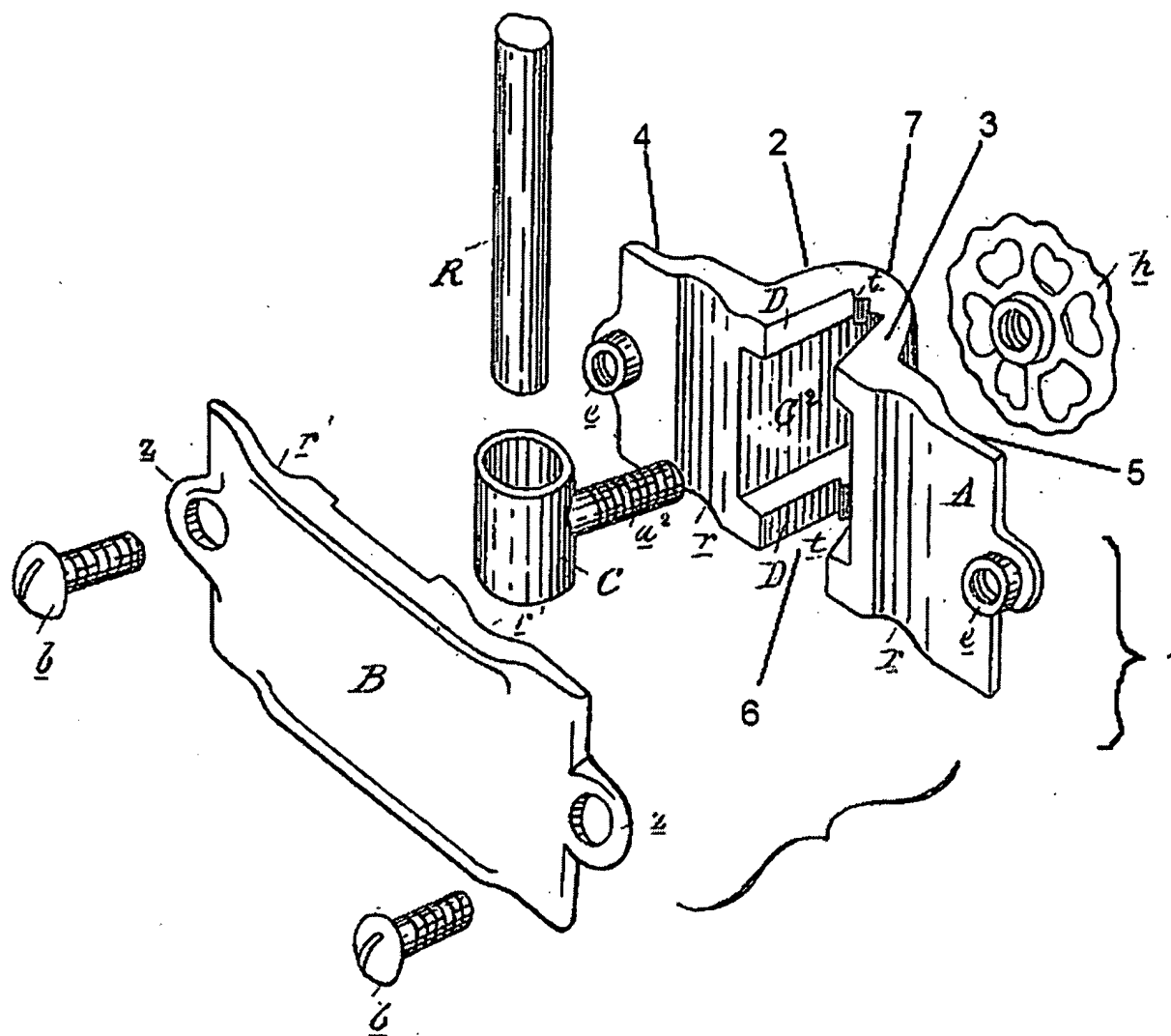
to modify the device of Aberle in view of Wright, Sr. by adding a base plug onto the pole in order to prevent insects from crawling into the pole from the bottom opening.

11. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle as applied to claim 3 above, and further in view of Dysarz in US Patent 5120016. Aberle discloses a bracket and pole assembly wherein the first (28) and second (30) bracket shaft joist walls, and the first (16), second (14), and third (18) bracket walls are each generally rectangular in shape but does not disclose a bracket with wall holes and a bolt. Dysarz discloses a bracket and pole assembly with at least two bracket wall holes (21) on opposite walls of a bracket (1), wherein the bottom support is at least one bolt (20) extending perpendicularly through the first bracket wall and the second bracket wall hole and through the bracket shaft. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle by adding wall holes and a bolt as taught by Dysarz in the lower portion of the bracket in order to help prevent, along with the bottom support wall (48), the pole from falling through the bracket shaft.

12. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle as applied to claim 2 above, and further in view of Ege in US Patent 311731. Aberle discloses a bottom support (48) in the form of a base plate but does not disclose a bracket with a first and second side being attached at obtuse angles to the bracket shaft joist walls. Ege discloses a bracket (1) with a bracket shaft (6) comprising a first side (2) and a second side (3), a first end of the first side being connected at an obtuse angle to the first bracket shaft joist wall (4), a second, opposite end of the first side

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being connected to a first end of the second side to form an apex (7), a second, opposite end of the second side being connected at an obtuse angle to the second bracket shaft joist wall (5). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle by using a bracket shaft with two sides meeting the bracket shaft walls at obtuse angles as taught by Ege in order to provide a shaft that takes up less room around the pole.

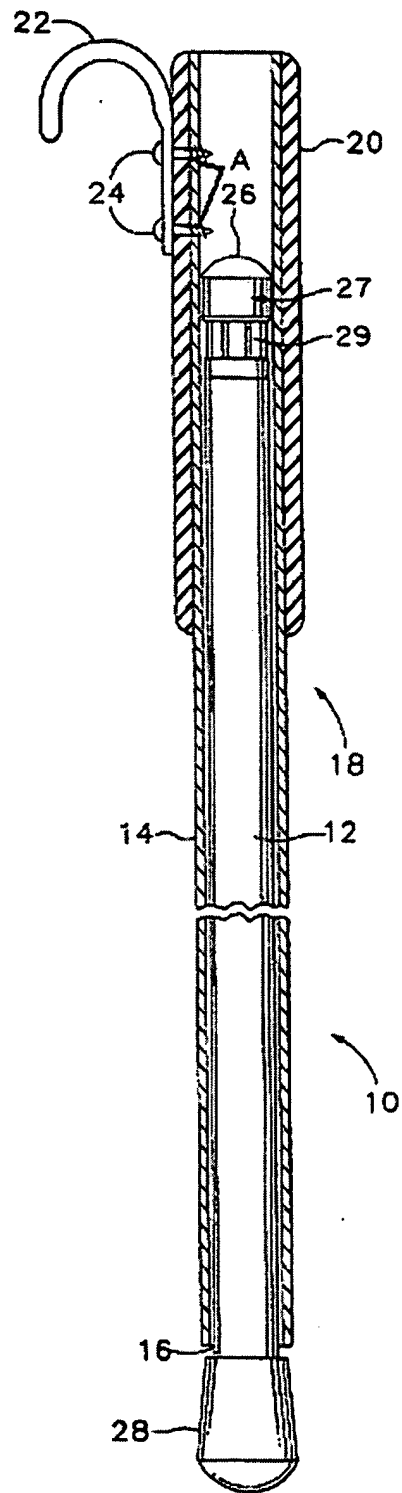


Ege, Figure 1

13. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle as applied to claim 12 above, and further in view of Ericksen in US Patent 5628538. As stated above, Aberle teaches the limitations of Claim 12 including a bracket and pole but fails to teach a hook mechanism. Ericksen teaches a hook mechanism with a hook (22), a plurality of hook bolt shafts (A) extending transversely through the pole (14) and hook bolts (24) insertable through the hook and hook bolt shafts. It would have been

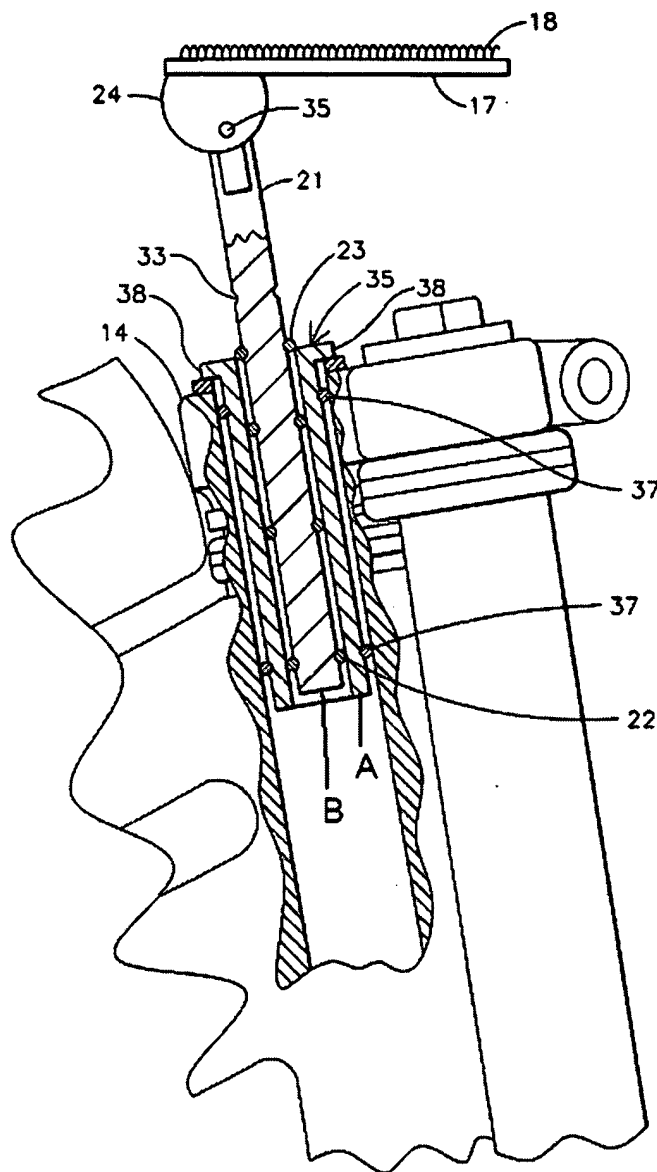
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obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle by adding a hook mechanism in order to allow the user to hang articles from the pole.



Ericksen, Figure 3

14. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle as applied to claim 3 above, and further in view of Lee in US Patent 6378815. As stated above, Aberle teaches the limitations of Claim 3 including a pole assembly. Aberle does not disclose a step down plug. Lee discloses a step down plug (35, best seen in Lee, Figure 7), which comprises a step down plug top section (38), a step down plug bottom section (A) connected to the step down plug top section and removably inserted in a shaft, and a generally circular step down plug aperture (B) extending through a center of the step down plug top section and the step down plug bottom section. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle by using a step down plug as taught by Lee in order to provide means to mount poles of smaller diameter than the bracket shaft in the bracket.

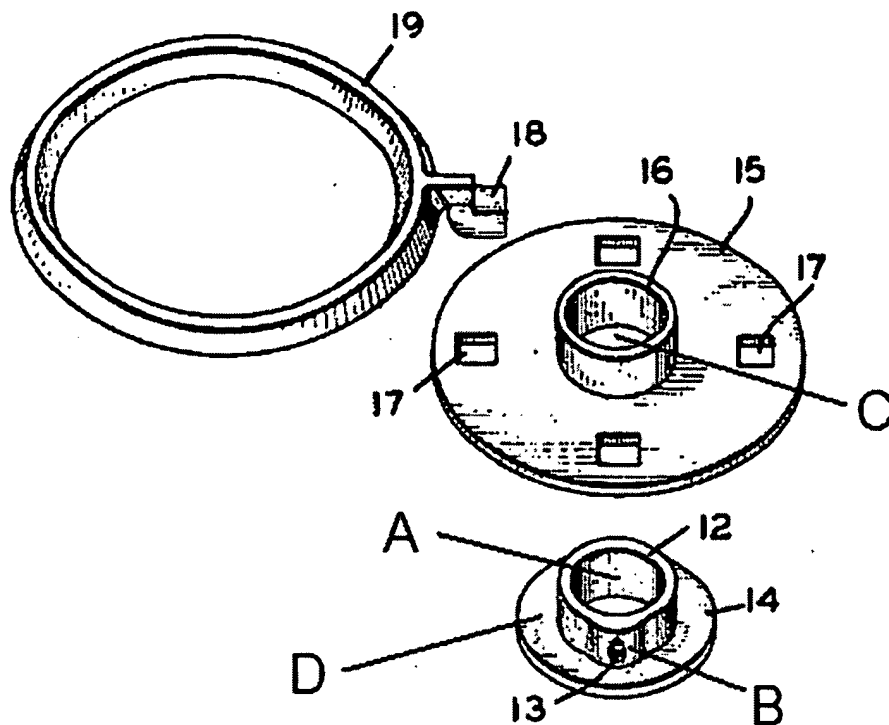


Lee, Figure 7

15. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle as applied to claim 3 above, and further in view of Fetter in US Patent 2970701. As stated above, Aberle teaches the limitations of Claim 3 including a pole assembly. Aberle does not disclose a table attachment mechanism. Fetter discloses a table

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attachment mechanism comprising a table attachment top section (14) and a table attachment bottom section (12) connected to the table attachment top section such that both are generally cylindrical in shape and a diameter of the table attachment bottom section is smaller than a diameter of the table attachment top section (relative sizes best seen in Fetter, Figure 3), a generally circular table attachment aperture (A) extending through the center of the table attachment top section and the center of the table attachment bottom section with a diameter about equal to an outer diameter of a pole (11), and a table bolt shaft (B) extending transversely through the table attachment bottom section. Fetter discloses that the table attachment aperture (A) is slidable over the pole (11) and the table attachment is removably secured to the pole by a table bolt (13) inserted through the table bolt shaft (B) (see Fetter, Column 2, lines 18-26). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle by adding a table attachment mechanism therewith as taught by Fetter in order to allow the user to removably attach a table to the pole.



Fetter, Figure 5

16. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle in view of Dysarz as applied to claim 7 above, and further in view of Burton in US Publication 2002/0047280. As stated above, Aberle in view of Dysarz teaches the limitations of Claim 7 including a bracket and pole assembly. Aberle in view of Dysarz fails to disclose bolt covers. Burton discloses a cylindrical bolt cover (46, best seen in Burton, Figure 6) over a bolt (36), the bolt cover being about equal in length to the width of a space (best seen in Figure 5). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle in view of Dysarz by using bolt covers as taught by Burton in order to protect the bolts from the impact of a pole.

17. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle in view of Wright, Sr. as applied to claim 4 above, and further in view of Dysarz in US Patent 5120016. As stated above, Aberle in view of Wright, Sr. teaches the limitations of Claim 4 including pole assembly. Aberle in view of Wright, Sr. fails to disclose a lamp as the cap plug. Dysarz discloses a bracket and pole assembly (1) wherein a cap plug comprises a lamp (27, best seen in Dysarz, Figure 14). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle in view of Wright, Sr. by adding a lamp at the top of the pole in order to provide light to the area where the assembly is installed.

18. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle in view of Dysarz and Burton as applied to claim 19 above, and further in view of Fetter. As stated above, Aberle in view of Dysarz and Burton teaches the limitations of Claim 19 including a bracket and pole assembly. Aberle in view of Dysarz and Burton fails to disclose a tabletop or tabletop attachment mechanism. Fetter discloses a central hole (C) in a tabletop (15) that has a diameter about equal to an outer diameter of a pole (11) and is slidable over the pole, and a table attachment mechanism (D) supporting the tabletop. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle in view of Dysarz and Burton by adding a tabletop and table attachment mechanism therewith as taught by Fetter in order to allow the user to attach a table to the pole.

19. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle as applied to claim 3 above, and further in view of Malinao. As stated

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above, Aberle teaches the limitations of Claim 3 including a pole assembly. Aberle fails to disclose a cap step down plug or an outdoor assembly. Malinao discloses a cap step down plug comprising a cap step down plug top section (3), a cap step down plug bottom section (2) connected to the cap step down plug top section and a generally circular cap step down plug aperture extending through the center of the cap step down plug top section and the center of the cap step down plug bottom section and an attachment bolt shaft (12) extending transversely through the cap step down plug bottom section, wherein the cap step down plug bottom section is insertable in a top end of a pole (23). Malinao also discloses an outdoor accessory assembly (7) removably inserted in the step down plug. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle by adding a step down plug and outdoor accessory assembly as taught by Malinao in order add utility to a pole and to provide means for using differently sized poles with the assembly.

20. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle in view of Malinao as applied to claim 23 above, and further in view of Brumfield. As stated above, Aberle in view of Malinao teaches the limitations of Claim 23 including a bracket and pole assembly. Aberle in view of Malinao fails to disclose an umbrella. Brumfield discloses attaching an umbrella (13) to a pole by removably inserting it into an aperture means (33). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle in view of Malinao by adding an umbrella as the outdoor accessory assembly as taught by Brumfield in order to provide shade to the user of the pole.

21. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle in view of Malinao as applied to claim 22 above, and further in view of Anderson. As stated above, Aberle in view of Malinao teaches the limitations of Claim 2 including a bracket and pole assembly. Aberle in view of Malinao fails to disclose using a lazy susan on the pole. Anderson discloses a rotating table (40) on a pole (18). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle in view of Malinao by adding a lazy susan or rotating table as the outdoor accessory on the pole in order to provide a pleasant dining experience for the user of the pole.

22. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aberle in view of Fetter and further in view of Malinao. Aberle discloses a bracket (10) comprising a bracket shaft (20), the bracket being attachable to a floor joist with the bracket shaft directly below a hole in the raised flooring surface and at least one pole assembly (100) comprising a removable hollow pole, an end portion of the pole being removably insertable in the bracket shaft but does not disclose a tabletop, a tabletop attachment mechanism, a cap step down plug or an outdoor accessory assembly. Fetter discloses a tabletop (15) and a tabletop attachment mechanism (D) attached to a pole (11). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle by adding a tabletop and tabletop attachment mechanism as taught by Fetter in order to allow the user to utilize the pole as an eating space. Aberle in view of Fetter fails to disclose a cap step down plug and an outdoor accessory assembly. Malinao discloses a cap step down plug (1) insertable in the top of a pole

assembly, the cap step down plug comprising a cap step down plug aperture and at least one outdoor accessory assembly (7) removably insertable in the cap step down plug aperture. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Aberle in view of Fetter by adding a cap step down plug and outdoor accessory assembly as taught by Malinao in order to provide the user the option of attaching other means to the pole.

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cheng, Maffei, Paine, Adams, Goodwin et al., Petryna et al., Galloway III, and Bosley disclose brackets for supporting posts. Hunter, Bryan, Keppeler, Williams et al., Engle Jr., Mannion, and Mouw disclose umbrella pole assemblies. Baker discloses using a padding device to ensure a tight fit. Hyde discloses a pole with a cap and plug. Zayeratabat and McBarnes Jr. et al. disclose pole assemblies. Crum discloses using a lamp on a pole.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information

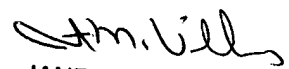
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JANET M. WILKENS
PRIMARY EXAMINER
Art 3637